IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SUO MOTU CONTEMPT PETITION NO.274 OF 2005

IN

APPEAL NO.173 OF 2000

Brijlal Meghraj Ahuja .. Petitioner

versus

Bandra Trilok Co-op. Hsg. Society & Ors. .. Respondents

...

Mr. S.R. Saudagar advocate for petitioner Brijlal M. Ahuja

Mr. P.S. Dani i/b. M/s Pathak & Associates for respondents.

CORAM : D.G. KARNIK, J

DATED :5th October, 2006

P.C.:

1. Heard the counsel.

2. The petitioner made an application before the co-operative appellate alleging that respondents had committed breach of the consent order and thereby committed contempt of the court. Holding that the respondents had committed the breach, by an order dated 3rd November, 2004, the co-operative appellate court has referred the matter to this Court for taking action in contempt against the respondents.

3. In appeal no.173 of 2000 before the co-operative appellate court the petitioner and respondents filed consent terms on 4th December, 2001. No order appears to have been passed on the consent terms by the court. However in the roznama the court passed following order:-

> "Parties filed consent terms duly signed. Taken on record and marked Exhibit C-1. In view of the consent terms the appeal stands disposed of. No order as to costs."

4. Mr Dani, learned counsel for the appellant referred to and relied upon the decision of the Supreme Court in Babu Ram Gupta vs. Sudhir Bhasin and another reported in AIR 1979 Supreme Court 1528. Therein the Supreme Court has held that there is a distinction between the compromise arrived at between the parties or consent order passed by the court at the instance of the parties and a clear and categorical undertaking given by any of the parties. If there is violation of consent terms or compromise terms, it would be open to the other side to execute the order, but no action in contempt can be taken. The Court held that if it were to hold that non compliance of a compromise decree or consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all. The Court further held that, therefore mere breach of the consent terms would not amount contempt unless there was any undertaking given by the parties in the consent terms which have been breached.

5. The observations of the Supreme Court in para 7 of the decision are quoted below:-

> "There is a clear cut distinction between a compromise arrived at between the parties or a consent order passed by the court at the instance of the parties and a clear and categorical undertaking given by any of the parties. In the former, if there is violation of the compromise or the order no question of contempt of court arises, but the party has a right to enforce the order or the compromise by their executing the order or getting an injunction from the court."

6. Similarly, the observations made in para 10 of the decision by the Supreme Court are quoted below:-

> "Indeed, if we were to hold that non-compliance of a compromise decree or consent order amounts to contempt of court, the provisions of the Code of Civil Procedure relating to execution of decrees may not be resorted to at all."

7. I have perused the consent terms. The consent terms do not contain any undertaking given to the court. Learned counsel for the appellant also concedes that in the consent terms no undertaking was given by the respondent to the court. In the circumstances, it cannot be said that the respondents have committed any breach of any undertaking given to the court. Appellant is free to take appropriate steps for execution of an order passed by the co-operative court in term of the consent terms. It cannot be said that respondents have committed any breach of the order of the court.

8. For these reasons contempt proceedings are dropped.

(D.G. KARNIK, J)